REMARKS

Applicants thank the Examiner for the courtesy extended during an Examiner Interview on August 1, 2006. During the interview, Applicants and the Examiner discussed the pending claims of record in view of the prior art. The Examiner prepared an Interview Summary for record. During the interview, Applicants and the Examiner discussed novel features provided in the instant invention over the art of record. Specifically, one point of novelty includes the adjustability of the resecting member between first and second distinct positions and angles. In addition, the novelty of the spacer disposed between the bone and the guiding member was discussed. As a result of the Examiner Interview, these points of novelty have been included in the amended claims.

Claims 1-20 are now pending in the application. Claims 21-30 have been withdrawn. Claims 1-3, 5, 6-8 9, 12, 13, 16, 19 and 20 have been amended in view of the Examiner Interview. Claims 31-35 have been added. The basis for the foregoing amendments may be found throughout the written description, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 101

Claims 1-20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. This rejection is respectfully traversed. Applicants have amended claims 1-3, 9, 12, 13, 19 and 20 to recite language including

"adapted to be" as suggested by the Examiner. As a result, Applicants respectfully request withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 8, 9, 12-14, 16 and 18-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,952,213 (Bowman). This rejection is respectfully traversed.

At the outset, Applicants note that claims 1 and 12 have been amended to more clearly recite the guiding member and resecting member. More specifically, claims 1 and 12 have been amended to recite a guiding member "adjustably securable in at least a first position enabling resection of a first portion of the bone and a second position enabling resection of a second portion of the bone". Furthermore, claim 1 has been amended to recite a resecting member "adapted to translate in a direction generally along a longitudinal axis of the bone during resection of the selected bone portion". In addition, claim 1 has been amended to include "wherein the resecting member is adapted to adjustably position at a first angle relative to an axis of said positioning member in said first position and a second angle relative to said axis of said positioning member in said second position and wherein said first position is distinct from said second position and said first angle is distinct from said second angle". Claim 12 has been amended to include "a spacer adapted to be disposed between the bone and the first guiding member and operable to limit said translation of the resecting tool during resection".

Applicants assert that Bowman fails to teach or suggest such a feature. Bowman provides a tibial bone cutting apparatus 10. With reference to FIG. 1 of Bowman, the bone cutting apparatus includes an intermedullary rod 40 adapted to be placed into the medullary canal. A support bar 66 may rotate relative to the rod 40 to change a cutting angle relative to the medial-lateral axis 16. A pivot device 80 may rotate to change an anterior-posterior slope of the cut (see e.g. Col. 3, Lines 63-68). A saw guide assembly 24 is placed adjacent an anterior portion of the bone 12. It is the placement of the saw guide assembly 24 that controls the cut. Once the saw guide assembly 24 has been accurately placed, pins 34 are inserted into the bone 12 to retain the guide assembly 24. Once the pins 34 have been inserted, the major portion of the apparatus 10 except for the saw guide assembly 24 is removed (FIG. 4).

A guide plate 184 (FIG. 4) may then be secured to the guide assembly 24 to define a slot 188 through which a saw blade 186 is inserted. Applicants note that the apparatus 10 of Bowman requires an assembly 24 that must be placed adjacent to an anterior portion of the bone 12. The slot 188 generally aligns in a direction transverse to the medullary canal for directing the saw blade 186 in a cutting plane generally transverse to the medullary canal. Once the guide assembly has been located, the saw blade 186 may be used to cut in the medial/lateral direction.

With regard to claim 1, the apparatus of the instant invention, as claimed, provides a guiding member adjustably securable in first and second distinct positions and angles and a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone during resection. Applicants assert that Bowman does not teach or suggest such a feature.

With regard to claim 12, the apparatus of the instant invention, as claimed, provides and a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone during resection. Claim 12 further provides a spacer adapted to be disposed between the bone and the guiding member and operable to limit translation of the resecting tool during resection. Applicants assert that Bowman, nor the collective art of record, does not teach or suggest such a feature. Therefore, Applicants respectfully request withdrawal of the rejection.

Claims 1, 4 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,556,399 (Huebner). This rejection is respectfully traversed. Huebner provides a bone harvesting drill bit 10. A fitting 32 includes a proximal end that renders it matable with existing drill chucks. A proximal end region 12a of a shank 12 of the bit 10 is captured within the fitting 32.

Applicants assert that Huebner does not teach or suggest the instant invention as claimed. Specifically, Huebner is simply a bone coring drill apparatus. Huebner does not teach or suggest a positioning member adapted to be fixed relative to the selected bone and a guiding member rotatably extending from the positioning member. Furthermore, Huebner does not teach or suggest a guiding member adjustably securable in a first position enabling resection of a first portion of the bone and a second position enabling resection of a second portion of the bone. Moreover, Huebner does not teach or suggest a resecting member adapted to adjustably position at a first angle relative to an axis of the positioning member in the first position and second angle relative to the axis of the positioning member in the second position wherein the first

position and first angle is distinct from the second position and second angle, respectively. Therefore, Applicants respectfully request withdrawal of the rejection.

Claims 1, 6 and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,409,489 (Sioufi). This rejection is respectfully traversed. Sioufi provides a surgical instrument 10 for cone-shaped sub-trochanteric rotational osteotomy. A guide 1 is fixed to a cervical screw 7 which has been previously inserted into a femoral head along the axis to the cone to be cut (FIG. 1). The drill bit 23 penetrates the lateral wall of the femur M as close as possible to the cervical screw 7. Cutting of the cone is achieved by lateral displacement of the drill bit 23 in a circular motion.

Sioufi does not teach or suggest a positioning member adapted to be fixed relative to the selected bone and a guiding member rotatably extending from the positioning member. Furthermore, Sioufi does not teach or suggest a guiding member adjustably securable in a first position enabling resection of a first portion of the bone and a second position enabling resection of a second portion of the bone. Moreover, Sioufi does not teach or suggest a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone during resection of the selected bone portion. Sioufi also does not teach or suggest a resecting member that is adapted to adjustably position at a first angle relative to an axis of the positioning member in the first position and second angle relative to the axis of the positioning member in the second position wherein the first position and first angle is distinct from the second position and second angle, respectively. Therefore, Applicants respectfully request withdrawal of the rejection.

NEW CLAIMS 31-35

Applicants note that new claim 31 recites limitations provided in both independent claims 1 and 12. In view of the Examiner Interview, Applicants believe that new claims 31–35 present patentable subject matter over the art of record. As such, Applicant respectfully submits that claims 31-35 are also in condition for allowance.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: _____

Richard W. Warner
Reg. No. 38,043
Brian D. Hollis
Reg. No. 51,075

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

BDH/cr